

Message Text

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E.O. 11652: N/A

TAGS: EIND, EEC

SUBJECT: EC INDUSTRIAL POLICY -- THE EUROPEAN COMPANY STATUTE

REF: EC-A-237, JULY 31, 1974

BEGIN UNCLASSIFIED

1. SUMMARY: THE EC COMMISSION APPROVED ON APRIL 30 A REVISED VERSION OF THE PROPOSED EUROPEAN COMPANY STATUTE CALLING FOR TRIPARTITE REPRESENTATION ON A SUPERVISORY BOARD OF DIRECTORS WITH SHAREHOLDERS SELECTING ONE-THIRD, EMPLOYEES ANOTHER THIRD AND THE FINAL THIRD SELECTED JOINTLY. BECAUSE OF THE VERY HEAVY REPRESENTATION GIVEN TO EMPLOYEES, THE PROPOSAL MAY HAVE TROUBLE GOING IN THE EC COUNCIL AND WILL RUN UP AGAINST STRONG EMPLOYER OPPOSITION. GUNDELACH HAS OPTIMISTICALLY STATED THAT HE HOPES THE COUNCIL WILL ACT POSSIBLY IN 1976. THE EUROPEAN COMPANY STATUTE WOULD, HOWEVER, IF APPROVED, BE AN OPTIONAL FORM OF CORPORATE LAW AND EVEN IF COUNCIL APPROVAL MAKES IT AVAILABLE TO COMPANIES THEY MAY CONTINUE TO USE EXISTING NATIONAL LAW. END SUMMARY.

2. THE EC COMMISSION, ON APRIL 30, APPROVED A SUB-
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STANTIALY REVISED VERSION OF THE PROPOSED EUROPEAN

COMPANY STATUTE WHICH IS DIFFERENT FROM THE VERSION IT APPROVED IN JUNE 1970. THE STATUTE, WHICH IS A BASICALLY SELF-CONTAINED CORPORATE CODE BASED ON "EUROPEAN" LAW, WILL, IF IT EVERY GAINS THE APPROVAL OF THE EC COUNCIL, GIVE COMPANIES OPERATING IN EUROPE THE OPTION OF "INCORPORATING" UNDER IT AND FOLLOWING ITS PROVISIONS RATHER THAN THE COMPANY LAW OF THE EC MEMBER STATES, WHICH IS THE ONLY POSSIBILITY AT THE PRESENT TIME. IT SHOULD BE EMPHASIZED THAT COMPANIES, BOTH EUROPEAN-BASED AND SUBSIDIARIES OF THIRD COUNTRIES, WILL BE ABLE TO "TAKE IT OR LEAVE IT", DEPENDING ON THEIR JUDGMENT OF THE ADVANTAGES AND DISADVANTAGES ARISING FROM ITS PROVISIONS WHEN COMPARED WITH NATIONAL LAW.

3. THE FULL TEXT OF THE PROPOSED EUROPEAN COMPANY STATUTE, WHICH WILL RUN SEVERAL HUNDRED PAGES, IS NOT YET AVAILABLE. HOWEVER, AN EC COMMISSION PRESS RELEASE, WHICH SUPPLEMENTED A PRESS CONFERENCE OF COMMISSIONER GUNDELACH ON MAY 5, OUTLINES THE REASONS THIS BODY OF LAW HAS BEEN PROPOSED AND EXPLAINS, IN SOME DETAIL, ONE OF THE MOST CONTROVERSIAL ASPECTS OF THE STATUTE, THAT DEALING WITH WORKER PARTICIPATION. (A COPY OF THE PRESS RELEASE HAS BEEN SENT BY TRANSMITTAL SLIP TO EUR/RPE).

4. THE NEED FOR A EUROPEAN COMPANY LAW CODE STEMS FROM THE PROBLEMS COMPANIES FACE BY HAVING TO INCORPORATE IN, AND ADHERE TO, THE WIDELY DIFFERING COMPANY LAW IN THE NINE MEMBER STATES. THE DIFFERING LEGAL SYSTEMS CREATE CORPORATE INEFFICIENCY, INTERFERE WITH CORPORATE TRANSPARENCY FOR TAX PURPOSES, AND PREVENT CROSS FRONTIER MERGERS AND OTHER TYPES OF TRANSNATIONAL BUSINESS COOPERATION THAT THE TREATY OF ROME WAS INTENDED TO FOSTER. IT IS THE COMMISSION'S HOPE THAT USE OF THE STATUTE WILL PERMIT COMPANIES TO REORGANIZE THEMSELVES ON A EUROPE-WIDE BASIS IN A FAR SIMPLER WAY THAN THEY CAN AT PRESENT. ITS USE WOULD ALSO MEAN THAT A COMPANY'S OBLIGATIONS TO ITS SHAREHOLDERS, CREDITORS, EMPLOYEES AND SOCIETY WOULD LIMITED OFFICIAL USE

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BE UNIFORM IN ALL THE MEMBER STATES.

5. THE MAJOR CHANGES BETWEEN THE ORIGINAL AND THE REVISED PROPOSAL ARE THOSE DEALING WITH EMPLOYEE PARTICIPATION. THE COMMISSION HAD INITIALLY INTENDED THAT THERE BE A TWO-TIER BOARD OF DIRECTORS WITH EMPLOYEES MAKING UP ONE-THIRD OF THE SUPERVISORY BOARD AND SHAREHOLDERS' REPRESENTATIVES

TWO-THIRDS. AN OVERWHELMING MAJORITY OF THE EUROPEAN PARLIAMENT, DURING ITS DEBATE ON THE STATUTE IN JULY 1974, RECOMMENDED THAT THE COMPOSITION OF THE SUPERVISORY BOARD BE ONE-THIRD SHAREHOLDERS' REPRESENTATIVES, ONE-THIRD EMPLOYEES' REPRESENTATIVES WITH THE REMAINING THIRD BEING CHOSEN JOINTLY BY THE REPRESENTATIVES OF SHAREHOLDERS AND EMPLOYEES (SEE REFERENCE AIRGRAM).

6. THE COMMISSION BOWING TO THE WILL OF THE PARLIAMENT, ACCEPTED THE TRIPARTITE SYSTEM. THE STATUTE PROVIDES THAT THE FINAL THIRD OF THE REPRESENTATIVES SHOULD REPRESENT THE GENERAL INTEREST. THEY ARE TO BE DIRECTLY DEPENDENT ON SHAREHOLDERS, THE EMPLOYEES OR THEIR RESPECTIVE ORGANIZATIONS AND ARE TO BE INDIVIDUALS WITH "THE NECESSARY KNOWLEDGE AND EXPERIENCE" TO FULFILL THEIR RESPONSIBILITY WHICH IS TO (A) MEDIATE BETWEEN THE EMPLOYEE AND SHAREHOLDER REPRESENTATIVES AND (B) DEFEND THE

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LONG-TERM INTERESTS OF THE COMPANY. IT SHOULD BE NOTED THAT THE STATUTE PROVIDES THAT EMPLOYEES DO NOT HAVE TO BE PRESENTED ON THE SUPERVISORY BOARD IF A MAJORITY OF THE EUROPEAN COMPANY'S EMPLOYEES VOTE AGAINST EMPLOYEE REPRESENTATION.

7. THE METHOD OF SELECTING EMPLOYEE REPRESENTATIVES IS QUITE COMPLICATED. A TWO-STAGE VOTING SYSTEM IS PROVIDED FOR WHEREBY ELECTORAL DELEGATES WOULD BE CHOSEN, WHO IN TURN WOULD

ELECT THE EMPLOYEES' REPRESENTATIVES. ELECTION OF BOTH ELECTROAL DELEGATES AND EMPLOYEES' REPRESENTATIVES WOULD BE BY SECRET BALLOT AND UNDER A SYSTEM OF PROPORTIONAL REPRESENTATION. TRADE UNIONS, AS WELL AS INDEPENDENT GROUPS OF EMPLOYEES, REPRESENTING 100 EMPLOYEES OR 10 PERCENT OF THE WORK FORCE IN ONE OF THE ESTABLISHMENTS OF THE EUROPEAN COMPANY CAN PUT UP A LIST OF CANDIDATES FOR ELECTROAL DELEGATES. THE TRADE UNION LISTS MAY ALSO INCLUDE A MINORITY OF TRADE UNION CANDIDATES FROM OUTSIDE THE ENTERPRISE. THE CANDIDATES FOR EMPLOYEES' REPRESENTATIVES MAY BE SUBMITTED BY THE EUROPEAN WORKS COUNCIL (SEE BELOW) TRADE UNIONS, THE ELECTORAL DELEGATES OR EMPLOYEES.

8. THE STATUTE ALSO PROVIDES FOR A EUROPEAN WORKS COUNCIL WHICH THE EMPLOYEES ELECT BY SECRET BALLOT. THE MEMBERS OF THE WORKS COUNCIL MAY BE MADE UP OF BOTH UNION REPRESENTATIVES AND LIMITED OFFICIAL USE

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NON-UNIONIZED EMPLOYEES. THE EUROPEAN WORKS COUNCIL IS TO BE KEPT INFORMED OF THE GENERAL ECONOMIC POSITION OF THE EUROPEAN COMPANY AND OF ITS FUTURE DEVELOPMENT. IT HAS TO BE CONSULTED BEFORE IMPORTANT ECONOMIC DECISIONS AFFECTING EMPLOYEES ARE TAKEN AND MUST CONSENT TO SUCH THINGS AS PLANT CLOSINGS AND MERGERS. IF THE EUROPEAN WORKS COUNCIL REJECTS A PLANT CLOSING OR A MERGER, THE ISSUES MAY BE TAKEN TO ARBITRATION. THE EUROPEAN WORKS COUNCIL IS NOT TO INTERFERE, HOWEVER, WITH THE ROLE OF TRADE UNIONS, AND ITS POWERS ARE CLEARLY CIRCUMSCRIBED. IN FACT, THE STATUTE WILL GIVE THE TRADE UNIONS THE OPPORTUNITY TO REACH AGREEMENT ON WORKING CONDITIONS WITH THE EUROPEAN COMPANY THAT WOULD APPLY TO THE FIRM'S PLANTS IN DIFFERENT MEMBER STATES. END UNCLASSIFIED.

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9. COMMENT: THE REVISED EUROPEAN COMPANY STATUTE WILL UNDOUBTEDLY RECEIVE WIDE COMMENT FROM LABOR, INDUSTRY AND OTHER LEGAL PROFESSION. IN DECEMBER, THE UNION OF THE INDUSTRIES OF THE EUROPEAN COMMUNITY (U.N.I.C.E.), THE UMBRELLA ORGANIZATION OF THE MANUFACTURERS' ASSOCIATIONS OF THE MEMBER STATES, CAME OUT STRONGLY AGAINST THE NEW TRIPARTITE PARTICIPATION ON THE SUPERVISORY BOARD. BUT WILL THE EC COUNCIL APPROVE THE STATUTE? EC COMMISSIONER GUNDELACH SAID HE BELIEVES THAT IT WOULD, AT THE LATEST, IN THE COURSE OF 1976. A MUCH LOWER RANKING COMMISSION OFFICIAL WAS LESS CERTAIN. HE SAID THAT ALTHOUGH THE TECHNICAL PROBLEMS MIGHT APPEAR VAST BECAUSE OF THE LENGTH OF THE STATUTE, IT HAS BEEN SO WORKED OVER BY NATIONAL EXPERTS THAT THEY COULD HANDLE THE TECHNICAL PROBLEMS IN A YEAR TO 18 MONTHS. BUT WHETHER THEY WORK RAPIDLY OR NOT WILL DEPEND ON THE POLITICAL WILL OF THE MEMBER STATES AND THAT IS NOT AT ALL CLEAR. BECAUSE OF THE INSISTENCE OF THE

EUROPEAN PARLIAMENT THAT THE TRIPARTITE SYSTEM BE ADOPTED THE
COMMISSION WAS OBLIGED TO GO BEYOND WHAT IT BELIEVED WAS
POLITICALLY WISE. IT REASONALIZES THE SITUATION BY NOTING THAT
THE STATUTE WILL BE "ON THE BOOKS" FOR AT LEAST 25 YEARS AND
CURRENT TRENDS SUGGEST THAT BY THE 1980'S THE TRIPARTITE SYSTEM
WILL BE WIDELY ACCEPTED. SINCE THE STATUTE WILL REPRESENT
AN OPTION FOR THE COMPANIES, NOT AN OBLIGATION, THEY WILL
BE FREE TO USE IT WHEN THEY FEEL THE TIME IS RIPE. END COMMENT.
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